

REMARKS

Overview

An April 6, 2006, non-final Office Action rejected claims 9-20 under 35 U.S.C. § 102(e) over U.S. Patent Application Publication No. 2004/0260600 to Gross ("Gross"). Applicants herein cancel claim 9. As a result, claims 10-20 are pending. Applicants respectfully traverse these rejections. Further examination and review in view of the comments provided below are respectfully requested.

Applicants' Technology

Applicants' technology is generally directed to identifying as "early adopter picks" products that are disproportionately purchased by early adopters. Early adopters are customers who seek out cutting-edge products before the products reach mainstream popularity. In some cases, the technology determines a score for a product identified as an early adopter pick. The score may be scaled to positively relate the score to the product's price and negatively relate the score to the amount of time that has elapsed since the product became available for ordering.

Prior Art

Gross is directed to a "system and method for determining and identifying demand for items based on observing behavior of trendsetters within a member population." (Gross, Abstract.) Gross provides techniques for identifying trendsetters within an online community, determining and scaling trendsetter ratings, identifying trend predictors within an online community, and identifying demand by an online community for a particular item. (Gross, [0019], [0020], [0025], [0031].) Gross does describe the generation of an adoption prevalence of an item by trendsetters, but the item's adoption prevalence does not positively relate to the item's price nor does it negatively relate to the amount of time that has elapsed since the item became available for ordering. Rather, Gross contemplates determining the adoption prevalence for an item by measuring the raw number of

instances the item has been adopted by trend predictors, or by determining a percentage figure that indicates a relative percentage of trend predictors or trendsetters who have adopted the item. (Gross, [0137].)

Rejections under 35 U.S.C. § 102(e)

In order to support a rejection under 35 U.S.C. § 102(e), the reference must teach every element of the claim. M.P.E.P. § 2131.

Claims 10-14

Independent claim 10 recites "determining a score for an item" and "scaling the score in a manner that causes it to positively relate to the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering." In rejecting the claims, the Office Action refers to Gross at paragraph [0126] as indicating a score for an item that positively relates to the price of the item and that negatively relates to the amount of time the item has been available for ordering.

Applicants respectfully disagree. Gross does not disclose, suggest or teach scaling a score for an item in a manner that causes it to positively relate to the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering. The section of Gross referenced by the Office Action merely discloses "scaling" a trendsetter or early adopter score "in accordance with the degree of 'earliness' so that a person could receive a score that is not simply a constant." (Gross, [0126].) However, scaling to "receive a score that is simply not a constant" clearly does not anticipate "scaling the score in a manner that causes it to positively relate to the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering." Moreover, scaling raw trendsetter scores in accordance with the degree of "earliness" simply means scaling raw trendsetter scores for an item based upon the trendsetter's actual adoption order within the population. Again, this does not anticipate scaling the adoption prevalence in a manner that causes it to positively relate to

the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering, as recited in claim 10. Accordingly, claim 10 is patentable over Gross.

Claims 11-14 depend from independent claim 10 and thus, include all of the limitations of claim 10. Thus, claims 11-14 are patentable for at least the same reasons as claim 10.

Claims 15-19

Independent claim 15 recites "determining a score for the item in a manner that causes it to . . . (2) positively relate to the item's price, and (3) negatively relate to the amount of time that has elapsed since the item became available for ordering." In rejecting the claims, the Office Action again refers to Gross at paragraph [0126] as indicating a score for an item that positively relates to the item's price and negatively relates to the amount of time that has elapsed since the item became available for ordering.

Applicants respectfully disagree. As discussed above, Gross does not disclose, suggest or teach determining a score for the item in a manner that causes it to positively relate to the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering. Accordingly, claim 15 is patentable over Gross.

Claims 16-19 depend from independent claim 15 and thus, include all of the limitations of claim 15. Thus, claims 16-19 are patentable for at least the same reasons as claim 15.

Claim 20

Claim 20 recites "a score indicating the extent to which the product . . . (2) has a high price, and (3) recently became available for ordering." In rejecting claim 20, the Office Action again refers to Gross at paragraph [0126] as showing a score indicating the extent

to which the product has a high price and the extent to which the product recently became available for ordering.

Applicants respectfully disagree. Gross does not disclose, suggest or teach a score indicating the extent to which the product has a high price and the extent to which the product recently became available for ordering. As discussed above, Gross merely discloses scaling a raw trendsetter score in order to "receive a score that is not simply a constant." (Gross, [0126].) Gross makes no mention of a score indicating the extent to which the item has a high price and the extent to which the item recently became available for ordering, as recited in claim 20. Accordingly, claim 20 is patentable over Gross.

Conclusion

In view of the foregoing, Applicants respectfully submit that claims 10-20 are allowable and ask that this application be passed to allowance. If the Examiner has any questions or believes a telephone conference would expedite examination of this application, the Examiner is encouraged to call the undersigned at (206) 359-8000.

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